



Asubpeeschoseewagong Netum Anishinabek

GRASSY NARROWS, ONTARIO P0X 1B0 • PHONE: (807) 925-2201 • FAX: (807) 925-2649

June 7, 2024

Attention: Anjala Puvanathan (Director, Ontario Region) (greatbear@iaac-aeic.gc.ca)
Impact Assessment Agency of Canada
Ontario Region
600-55 York Street
Toronto, ON M5J 1R7

RE: Great Bear Gold Project – Comments on IAAC draft Indigenous Engagement and Partnership Plan

On behalf of Asubpeeschoseewagong Anishinabek (“ANA” or Grassy Narrows First Nation”), we write to share with you Grassy Narrows’ preliminary comments on the draft Indigenous Engagement and Partnership Plan (“IEPP”) for the Great Bear Gold Project Impact Assessment.

We have not had enough time or capacity support funding to complete a more fulsome review of the IEPP. As you know, Grassy Narrows is simultaneous being asked to respond to multiple permit applications from various provincial ministries regarding this Project. At the same time, Grassy Narrows was only given 30 days to review and provide comments on the IEPP and other documents like the draft Tailored Impact Statement Guidelines. That is not enough time. The Agency takes nearly a month to respond to short letters from ANA, even though it has extensive capacity and experience with this process. We have repeatedly asked the Agency for additional time, which is reflected in the draft IEPP itself, and these requests have been denied.

We have also not received a response to our substantial concerns with the Project. We repeat our request that the Impact Assessment process be paused until the concerns and barriers expressed in our previous letters have been resolved and Grassy Narrows’ consent for the Impact Assessment process is obtained. This pause is necessary given these significant concerns, as well as to correct procedural missteps that have unfairly left Grassy Narrows behind.

Those concerns and barriers include, but are not limited to:

- a. Insufficient time;
- b. Insufficient capacity support;
- c. Failure to take into account Grassy Narrows’ unique circumstances;
- d. Failure to adjust the process to take into account Grassy Narrows’ governance process;
- e. Inability to meaningfully participate during the mercury crisis;
- f. Failure to provide clear and certain explanation of the process in light of the SCC; decision and lack of revised legislation and regulation;
- g. Failure to include Grassy Narrows in the pre-planning phase;
- h. Failure to harmonize the process with Grassy Narrows laws and protocols;
- i. Failure to address outstanding issues about jurisdiction, landuse designations, cumulative impacts, outstanding obligations and duties from which this issue flows;

- j. Failure to seek, nor to reach agreement on, a process agreement before initiating the process;
- k. Refusal to pause the process while the community, including lead staff on this file, are grieving the loss of their children and grandchildren; and
- l. Failure to obtain Grassy Narrows' consent for the Impact Assessment process.

The Agency talks about partnership, but to date it has attempted to unilaterally impose a cookie cutter process on ANA that respects none of ANA's requests and unique circumstances. The Agency asked what ANA wanted; ANA replied clearly that ANA needs a pause, participation in the pre-planning phase, a mutually agreed upon process, sufficient time, capacity support, respect of its governance processes, barriers addressed, outstanding strategic issues resolved, respect for UNDRIP and free, prior and informed consent, and a process that takes into account Grassy Narrows' unique circumstances. In response we have received a 'no' to every single one of these requests and absolutely no flexibility with respect to the process.

The IEPP must comply with UNDRIP

The draft IEPP lists one of the Agency's objectives as follows:

"Ensure engagement is consistent with the Government of Canada's commitment to implement the United Nations Declaration on the Rights of Indigenous Peoples (the Declaration) as a comprehensive international human rights instrument and Canada's roadmap for reconciliation. The Declaration also emphasizes the need to work together in partnership and respect, as articulated through the principle of free, prior and informed consent. This principle reflects working together in good faith on decisions that impact Indigenous Peoples, with the intention to achieve consensus." (emphasis added)

Despite reference to implementing the Declaration, which sets the standard of free, prior and informed consent, it is apparent that the Agency's commitment is to seek "consensus" on a recommendation while the decision about whether to allow the Project to proceed (and if so, how) will remain at the sole discretion of the Minister. This process allows for the Project to proceed even if Grassy Narrows' consent has not been obtained, which is clearly not consistent with UNDRIP and free, prior and informed consent.

We remind you that the standard for consultation with Indigenous peoples under the Declaration is free, prior, and informed consent:

Article 32(2): States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free and informed consent prior to the approval of any project affecting their lands or territories and other resources, particularly in connection with the development, utilization or exploitation of mineral, water or other resources. (emphasis added)

Measure 51 of Canada's UNDRIP Action Plan, which must be completed in partnership with Indigenous peoples, states that "the Impact Assessment Agency will implement the *Impact Assessment Act* (IAA) in a way that aligns with the objectives and spirit of the UN Declaration." In particular, this includes "carrying out impact assessments in a manner that emphasizes the need to seek free, prior, and informed consent." (emphasis added)

Grassy Narrows expects that the Agency will carry out the Impact Assessment process for the Great Bear Gold Project in a manner consistent with the Declaration and that respects Grassy

Narrows' right to give or to withhold our free, prior and informed consent and to have that decision honoured. This must be clearly stated in the IEPP. Anything less would be contrary to Canada's commitments under the Declaration, its own UNDRIP Act and recent Action Plan, and the Crown's stated efforts to advance reconciliation in a tangible way. The Agency's process, its recommendation to the Minister, and the decision of the Minister must all honour the UNDRIP and the right to free, prior and informed consent.

As part of the IEPP and consistent with the objective of procedural fairness, the Agency must provide a written response to all comments submitted by Grassy Narrows with reasons. Any documents revised by the Agency must be provided to Grassy Narrows for review prior to approval, and Grassy Narrows must have the opportunity to provide further comments. Grassy Narrows' comments must be reflected in the Agency's final recommendation to the Minister.

Grassy Narrows also requests that the IEPP provide that the Agency's final recommendation to the Minister will include a section co-authored by Grassy Narrows regarding the Agency's compliance with the Declaration and whether Grassy Narrows' free, prior and informed consent was obtained.

Grassy Narrows also seeks a community-specific consultation work plan that complies with the duty of free, prior and informed consent as set out in the Declaration and includes the requirements outlined above. Under the IEPP, Grassy Narrows must have the ability to co-create the work plan and Impact Assessment process, identify activities and adverse impacts that will be included in the scope of the Impact Assessment, and provide our consent to a mutually agreeable process. We do not consent to the proposed process. We also require capacity support and time to complete a Grassy Narrows-led impact assessment process which would then inform our participation in the IAAC process. Regardless, the project should not proceed without the free, prior and informed consent of Grassy Narrows.

Grassy Narrows requires sufficient time, information and capacity funding

The draft IEPP recognizes that Indigenous communities have requested adequate financial support to enable meaningful participation in the impact assessment process. As previously outlined, we require funding to hire staff, engage our community, carry out our governance process, and obtain professional support from experts, lawyers, and advisors to engage in a meaningful way.

Grassy Narrows applied, at our own expense, to the Agency's Indigenous Capacity Support Program to support our ability to meaningfully participate in the Impact Assessment process. However, our application to the Program for funding was denied and the Agency has been unable to adequately explain the reasoning behind this decision. The Indigenous Partnerships Division stated that Grassy Narrows would be better suited for the Agency's Participant Funding Program ("PFP") which provides very limited and identical funding to Indigenous communities regardless of whether they are downstream of the Project and to third party stakeholders like NGOs who are not the original people's of this land and who do not have inherent, Aboriginal, and Treaty rights.

The Agency offered \$5,000 in capacity funding to Grassy Narrows through the PFP on two occasions for use during specific stages of the Impact Assessment process. The amount offered is insufficient to meaningfully review lengthy technical documents, engage with our people, carry out our governance process, and prepare a response. As well, this piecemeal allocation of

funding at each stage of the Impact Assessment process is inadequate and does not consider our unique circumstances nor our position as an Indigenous nation.

Throughout our efforts to obtain reasonable capacity funding, including through requests to the agency and to the Ministry of MINES, the IAAC process has marched on, leaving us further and further behind. Now key decisions, including the scope, process, and form of the assessment are about to be made while our capacity barriers have yet to be addressed and we have yet to be able to meaningfully review and respond to the materials and the subject matter.

Grassy Narrows is even more impoverished than our First Nation peers due to the ongoing impacts of mercury poisoning. Our territory has already experienced a great deal of harm from industrial activities including mercury, damming, industrial logging, and mining. The cumulative effects of these industrial impacts have passed the point of an unreasonable, unjustifiable impact on the exercise of our Treaty rights, and on our health and wellbeing. As a result, our community suffers from unusually high rates of conditions including poverty, food insecurity, disease, neurological conditions, conditions affecting learning, premature death, and child and youth suicide. The social conditions created by mercury poisoning and the cumulative impacts of industry place us in an ongoing extreme crisis.

We lack the funds required to engage in an informed and fair way. We have had to divert funds in order to hire experts to provide preliminary advice about the Project, in the absence of meaningful capacity supports from the Crown. The Agency's commitment to provide sufficient ongoing funding throughout the entirety of the Impact Assessment process must be reflected in the IEPP.

We also need more time. Grassy Narrows requests that at each stage of the Impact Assessment process, the Agency must consult with Grassy Narrows to identify and agree on an appropriate time period for document review and comment, which will be at least three months per review/comment.

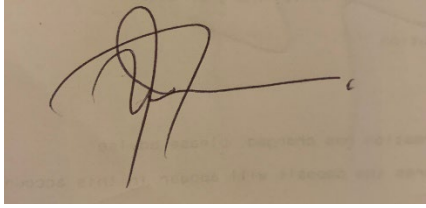
The IEPP must ensure that Grassy Narrows is provided with sufficient information at all stages of the Impact Assessment process. The process should not begin until the proponent provides Grassy Narrows and the Agency with full and final versions of all technical assessments, including underlying data and appendices, signed by qualified professions. Grassy Narrows expects to receive full and final versions of all technical documents prior to providing comments.

Grassy Narrows expects that the final IEPP will include the aforementioned comments, notably that the Agency must receive Grassy Narrows' free, prior and informed consent during all stages and in all aspects of the Impact Assessment process, and that Grassy Narrows receive adequate and ongoing funding that meets the unique needs of our First Nation, have our other barriers to meaningful participation addressed, our outstanding strategic issues resolved, and the obligations and duties of the Crown fulfilled.

When considering these comments and any future comments made by Grassy Narrows, the Agency should take into account Grassy Narrows' submissions in their entirety, including earlier submissions and expert reports. This must be reflected in the IEPP.

We look forward to your timely response and to reviewing and providing further comments on the revised draft IEPP prior to its approval.

Miigwetch,



Joseph B. Fobister
Lead Negotiator, Lead Negotiator for the Grassy Narrows Lands Protection Team

Cc:

Grassy Narrows Lands Protection Team

Mike Fobister, Supervisor (mike.fobister@googlemail.com)
Dan Mossip-Balkwill, Advisor (dan.mossip.balkwill@gmail.com)
David Sone, Advisor (david.sone@gmail.com)
Jackie Esmonde, Legal Counsel (jesmonde@cavalluzzo.com)
Sydney Lang, Legal Counsel (slang@cavalluzzo.com)

Joseph Castrilli, Legal Counsel (castrillij@sympatico.ca)
Rick Lindgren, Legal Counsel (r.lindgren@sympatico.ca)

Ministry of Environment and Climate Change

The Honourable Steven Guilbeault, Minister (ministre-minister@ec.gc.ca)
Jean-Francois Tremblay, Deputy Minister (jf.tremblay@ec.gc.ca)
Lawrence Hanson, Associate Deputy Minister (lawrence.hanson@ec.gc.ca)

Impact Assessment Agency of Canada

Natalie Boyd, Project Manager (greatbear@iaac-aeic.gc.ca)
Ian Lindsay, Senior Consultation Analyst (greatbear@iaac-aeic.gc.ca)

Kinross/Great Bear

Aaron MacDonnell, Director of Environmental Services (aaron.macdonnell@kinross.com)
Luke Crosby, Legal Counsel (luke.crosby@kinross.com)